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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,651	03/30/2001	Scott J. Tuman	54407US006	9447
32692 7590 08/02/2007 3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EXAMINER TSOY, ELENA	
			ART UNIT 1762	PAPER NUMBER
			NOTIFICATION DATE 08/02/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 09/822,651	<b>Applicant(s)</b> TUMAN ET AL.	
	<b>Examiner</b> Elena Tsoy	<b>Art Unit</b> 1762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 71-79, 81-83, 85-90 and 92-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 71-79, 81-83, 85-90 and 92-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

Amendment filed on June 18, 2007 has been entered. New claims 112-113 have been added. Claims 71-79, 81-83, 85-90, and 92-113 are pending in the application.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 71, 73-79, 81-82, ~~85~~, 94-95, 97-109, and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al (US 5,669,120) for the reasons of record set forth in paragraph 4 of the Office Action mailed on 1/18/2007.

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4. Claims 72, 83, 85-90, 92-93, 96, and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Allen et al (US 5,547,531) for the reasons of record set forth in paragraph 5 of the Office Action mailed on 1/18/2007.
5. Claims 85, 107 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Murasaki (US 5,643,651) for the reasons of record set forth in paragraph 9 of the Office Action mailed on 4/13/2006.
6. Claims 112-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wessels et al in view of Allen et al.

Wessels et al in view of Allen et al are applied here for the same reasons as set forth in paragraph 5 of the Office Action mailed on 1/18/2007.

Wessels et al do not teach that a second side of the substrate is free of the polymer making up the plurality of discrete polymeric regions.

Allen et al teach that a composite female component of the fastening device for the use in diapers (See column 4, lines 6-7) comprising a non-woven fibrous web joined to an elastic backing 34 provides a low cost loop fastening material instead of conventional knit or woven fabric (See Figs. 1, 4; column 1, lines 68; column 2, lines 1-24; column 3, lines 6-12; column 5, lines 46-57), as was discussed in previous Office Action. Allen et al further teach that the elastomeric backing 34 may take on a number of different configurations. For example, the backing 34 may comprise a thin film, a **laminate of two or more films**, a web of elastomeric adhesive that has been extruded in the form of a thin film, or any combination thereof (See column 9, line 64 to column 10, line 11). It is the Examiner's position that *different* polymers may be used for making two films in the laminate of Allen et al because Allen et al does not limit their teaching to particular films; and because Allen et al teach that the elastomeric backing 34 may comprise

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two films of *different* polymers: a film of elastomeric *adhesive* (See column 15, lines 51-52) and a *non-adhesive* elastomeric film (See column 16, lines 34-35).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used an elastic backing comprised of a laminate of two films of *different* polymers for making a fastener in Wessels et al so that only upper polymer film (which is joined to the fibrous web) is used for making hooks, instead of conventional knit or woven fabric joined to a single polymer film with the expectation of providing the desired low cost, as taught by Allen et al.

### ***Response to Arguments***

7. Applicants' arguments filed June 18, 2007 have been fully considered but they are not persuasive.

#### **I. (A) *Claim 85***

Although claim 85 is indicated as rejected for obviousness in view of Wessels et al., Applicants note that claim 85 depends directly from independent claim 83 which is not rejected for obviousness in view of Wessels et al. As a result, Applicants respectfully submit that a prima facie case of obviousness has not been established for claim 85.

The Examiner agrees with Applicants. Rejection of claim 85 over Wessels et al has been withdrawn.

#### **(B) *"The Polymer Of The Plurality Of Polymeric Regions Does Not Extend through The Substrate To The Second Major Side Of The Substrate"***

Applicants request reconsideration and withdrawal of the obviousness rejection of claims 109 and 111 in view of Wessels et al. Each of independent claims 109 and 111 recites features that are not

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disclosed or suggested by Wessels et al. For example, each of independent claims 109 and 111 recites that "the polymer of the plurality of polymeric regions does not extend through the substrate to the second major side of the substrate." The Office Action does not directly address how Wessels et al. teaches or suggests a construction in which the polymer used to construct the hook regions on a first side of the substrate "does not extend through the substrate to the second major side of the substrate" as recited in each of independent claims 109 and 111. The polymer regions of Wessels et al. are actually formed by forcing, molten polymer through the substrate and into cavities in which hooks are formed. As a result, the polymer contacts the "second major side of the substrate" before it is forced through the first major side and into the cavities. See, e.g., Wessels et al., eel. 3, line 63 to col. 4, line 48 as well as Figures 1 & 5.

The Examiner respectfully disagrees with this argument. First of all, in the absence of definition, the term "**substrate**" in claims should be given *broadest* reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. Desiccants Inc. v. Medzam Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). The *broadest* reasonable interpretation of the term "**substrate**" in light of the supporting disclosure would be *any* film, including a composite film, having a first major side and a second major side, to which first major side a plurality of polymeric regions are fused. Therefore, in contrast to Applicants argument, in Wessels et al, a polymer film 4a with embedded S can be broadly interpreted as substrate as claimed. Therefore, the polymer regions of Wessels et al. are **not** actually formed by forcing molten polymer *through the substrate* but formed by extruding a film 4a of a molten polymer (claimed substrate), joining the polymer film 4a with a fabric S, then forcing the **upper** portion of molten polymer 4a *through the fabric* S into cavities

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(See Fig. 5). As a result, the polymer of the plurality of polymeric regions in Wessels et al does not extend *through* the substrate 4a with embedded fabric S as shown in Figs. 4B and 4F.

(C) *"The Plurality Of Discrete Polymeric Regions Are Located Only On The First Major Side Of The Substrate"*

Applicants respectfully request reconsideration and withdrawal of the obviousness rejection of claims 71, 73-79, 81-82, 94-95, 97-109, and 111 in view of Wessels et al. Wessels et al does not teach "the plurality of discrete polymeric regions are located only on the first major side of the substrate." recited by each of independent claims 71, 94, 109, and 111 because the polymer regions of Wessels et al. are actually formed by forcing, molten polymer through the substrate (pile core sheet S) and into cavities in which hooks are formed.

The Examiner respectfully disagrees with this argument. First of all, as was discussed above, claimed substrate is NOT the pile core sheet S but a polymer film 4a. Secondly, it is held that determination of patentability is based on the product itself; and **patentability of a product is independent of how it is made.** Figs. 4B and 4F of Wessels et al show the plurality of discrete polymeric regions located only on the first major side of the substrate 4a with embedded fabric S. Therefore, Wessels et al teach the limitation no matter how it is made.

D. *"Each Discrete Polymeric Region Of The Plurality Of Discrete Polymeric Regions Comprises A Discrete Patch Having A Perimeter That Is Entirely Bordered By The First Major Side Of The Substrate"*

Although the assertion is made by the Office Action that the difference between "a discrete patch having a perimeter that is entirely bordered by the first major side of the substrate" and the

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continuous stripes of polymer taught by Wessels et al is a mere matter of design choice, no support or reasoning is provided for that conclusory assertion. Applicants respectfully submit, however, that a change in the patterns disclosed by Wessels et al. would be, e.g., a change in the spacing or width of the continuous stripes - not a change to discrete patches as recited in the rejected claims.

The Examiner respectfully disagrees with this argument. Wessels et al teach "Further, since the pile core sheet is manufactured by weaving or knitting, it is possible to **change the design** of the pile core sheet in arrangement and orientation of piles and to determine the size, shape or **arrangement of hook elements** optionally. It is accordingly possible to cope instantly with **various requirements** for the surface fastener in which hook and loop elements coexist." (See column 10, lines 53-60). Therefore, in contrast to Applicants argument, a change in the patterns disclosed by Wessels et al would be **NOT only** a change in the spacing or width of the continuous stripes - but a change in **arrangement of hook elements** according to **various requirements** for the surface fastener.

E. *The Substrate Comprises A Nonwoven Web*

First, Applicants submit that the layer 4a is not a film layer that is provided as a part of the substrate. The "film layer 4a" relied on by the Examiner, is, in fact, merely the portion of the polymer that was forced through the substrate ("porous pile core sheet S"). Second, as used in the art, the term "nonwoven web" has a particular meaning in that a nonwoven web is fibrous, but not knitted or woven. To assert that a film is a "nonwoven web" finds no support in the art and is an unreasonably broad interpretation of the term.



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The Examiner respectfully disagrees with this argument. In contrast to Applicants argument, film layer 4a with embedded S is a substrate, as was discussed above.

II. A-D *Claims 72, 83, 85-90, 92-93, 96, and 110 over Wessels et al. in view of Allen et al. Claims 72, 83, 85-90, 92-93, 96, and 110 were rejected under 35 U.S.C. §103(a) as being unpatentable over Wessels et al. (U.S. Patent No. 5,669,120) in view of Allen et al (U.S. Patent No. 5,547,531).*

Applicants disagree and request reconsideration and withdrawal of this rejection as being non-obvious over Wessels et al.

The Examiner respectfully disagrees with this argument for the reasons discussed above.

III. A-B *Claims 85 and 107 over Wessels et al in view of Murasaki*

Applicants disagree and request reconsideration and withdrawal of this rejection as being non-obvious over Wessels et al.

The Examiner respectfully disagrees with this argument for the reasons discussed above.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Thursday, 9:00AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elena Tsoy  
Primary Examiner  
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July 23, 2007